IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 26842 of 2003

Between:

K. Rajendra Babu, S/o. Deshpathi Rao, R/o. Appikatla, Bapatla Mandal, Guntur District.

..... PETITIONER

AND

1. The High Court of Andhra Pradesh, Represented by its Registrar General (Admn.), High Court of Andhra Pradesh, Hyderabad.

2. The Principal District and Sessions Judge, L.B. Nagar, Ranga

Reddy District.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction especially one in the nature of Writ of Mandamus declaring that proceedings issued in Dis. No. 9083/2001 dated 29.11.2001 dismissing the petitioner from service which was confirmed by order in Roc. No. 195/2001.CII/1 dated 1.10.2002 and the further proceedings issued in Roc. No. 195/01.CII/1 dated 14.8.2003 dismissing the review petition filed by the petitioner as illegal, arbitrary discriminatory, violative of Articles 14 and 16 of the Constitution of India and further declare that the punishment imposed is highly disproportionate and further declare that the petitioner is entitled to be reinstated into service and pass such other order.

Counsel for the Petitioner: MR.M.SURENDER RAO

Counsel for the Respondents : SMT.M.BHASKARA LAKSHMI (SC FOR APHC)

The Court made the following :

O R D E R : (Per Justice B.Seshasayana Reddy)

1. The writ petitioner questions the order of his dismissal from service and seeks a writ of mandamus declaring the Proceeding Dis.No.9083/2001 dated 29.11.2001 of R2-Principal District and Sessions Judge, R.R. District and the proceedings of High Court in Roc.No.195/2001.CII/1 dated 1-10-2002 and in Roc.No.195/01.CII/1 dated 14.8.2003 as illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India and further declaration that the punishment imposed on him is disproportionate and he is entitled to be reinstated into service.

2. The writ petitioner-K.Rajendra Babu was appointed Record Assistant in the Unit of Rangareddy District on 5.11.1984. He was promoted as Bailiff on 10.9.1986 and further promoted as L.D.Clerk on 20-10-1996. While working as L.D.C. in Special Mobile Court, R.R. District, he was deputed to work in the court of Special JSCM Court, Hyderabad (W & S) in April, 1999. The Additional JFCM, Hyderabad (W & S) was incharge of the court of Special JSCM, Hyderabad (W & S). The fine amounts paid by the accused were used to be deposited in Bank by way of challans. One R.Srinivas, attender in the court of Munsif Magistrate, Tandur, was working on deputation in the court of Special Judicial Second Class Magistrate, Hyderabad (E & N). One Buran, a retired attender was working in the court of Special Judicial

Second Class Magistrate, Hyderabad (W & S) as an attendant on a consolidated pay. He was said to be of not sound health and therefore R.Srinivas, attender working on deputation in the court of Special Judicial Second Class Magistrate, Hyderabad (East and North), was taking the amounts relating to the Special Judicial Second Class Magistrate, Hyderabad (W & S) also for depositing in bank. The writ petitioner noticed that the said R.Srinivas did not deposit the amounts in Bank and fabricated challans and so he brought it to the notice of the then Presiding Officer of the Court of Special Judicial Second Class Magistrate, Hyderabad (W & S) on 26.6.90 vide Ex.P.1 report. Thereupon, the Presiding Officer informed the same to the District Judge, R.R. District vide Ex.P.2 report dated 28.6.2000. The said R.Srinivas submitted application-seeking permission to deposit the amount covered under challans dated 18.5.2000 and 20.6.2000 (Rs.600 + 4400) vide Ex.P.3 dated 28.6.2000. The District Judge accorded permission vide Ex.P.4 and accordingly the said R.Srinivas paid the amount on 17.7.2000 vide Ex.P.5 challan. The District Judge initiated departmental proceedings against the writ petitioner and the said R.Srinivas. Four charges were framed by the District Judge. Of which, two charges relatable to the writ petitioner and two charges relatable to R.Srinivas. Charge memos were served on the writ petitioner as well as R.Srinivas. Both the delinquents submitted their explanations. A regular departmental enquiry was constituted by the District Judge by appointing JFCM, Special Mobile Court as Enquiry Officer. The charges leveled against the delinquents are as follows:

CHARGE NO.1: That you Sri.K.Rajendra Babu, LDC, Spl.Mobile Court, Ranga Reddy District on deputation working in Spl.J.S.C.M.Court, Hyd. West & South have handed over the fine amount of Rs.600/- on 18-5-2000 and Rs.4400/- on 20-6-2000 to Sri.R.Srinivas, Attender of spl.J.S.C.M.Court, Hyd. East and North for remittance in the Bank who is no where concerned to his court. Sri.R.Srinivas, Attender has not remitted the said amount in the Bank.

CHARGE NO.2: That you Sri.K.Rajendra Babu is expected to keep the challan Register in your custody. But the (1) Challan No.20573, dated 3-5-2000 for Rs.900/-, (2) Challan No.04178 dt. 5-6-2000 for Rs.2400/- and (3) Challan dated 8-6-2000 for Rs.1200/-, in the challan register are not found and it is found on verification that the amounts in the above said challans were not deposited in the Bank and the same has been misappropriated, an that you are responsible for the said misappropriation, which amounts gross negligence in discharging your duties and thereby rendered yourself liable for disciplinary action under A.P.C.S. (C.C.A Rules), 1991.

CHARGE NO.3 : That you R.Srinivas, Attender, Junior Civil Judge's Court, Tandur working on deputation in the Spl.J.S.C.M.court, Hyd. East & North have received the fine amount of Rs.600/- and Rs.4400/- on 18-5-2000 and 20-6-2000 pertaining to the Spl.J.S.C.M.court, Hyd. West & south from Sri.K.Rajendra Babu, L.D.C., of the said Court for sake of remitting the same in the Bank and it is found on verification that you have not remitted the said amount in the Bank and that the challans through which you have paid the amount are not genuine challans and thereby you have misappropriated the fine amounts of the said Courts which amounts to gross negligence in discharging your duties and thereby rendered yourself liable for disciplinary action under A.P.C.S. (C.C.A Rules), 1991.

CHARGE NO.4 : That you R.Srinivas, Attender, Junior Civil Judge's Court, Tandur working on deputation in Spl.J.S.C.M.Court, Hyd. East & North have also not remitted the fine amount (1) Rs.900/- pertaining to challan No.20573, dt.3-5-2000, (2) Rs.2400/- pertaining to challan No.04178, dt.5-6-2000 and (3) Rs.1200/- challan dated 8-6-2000 into the Bank and it is found that the above said challans are not found in the challan register and you have received the said aount from K.Rajendra Babu, LDC, and that you have misappropriated the above said fine amounts of the Court which amounts to gross negligence in discharging your duties and thereby rendered yourself liable for disciplinary action under A.P.C.S. (C.C.A Rules), 1991.

3. The explanation of the writ petitioner for charge Nos.1 and 2

referable to him is that he handed over the amounts to R.Srinivas for being deposited in the Bank and that the said R.Srinivas fabricated challans and misappropriated the amounts. His further explanation is that the said R.Srinivas removed the fake challans from the challan book, after obtaining signatures of the Presiding Officer and entering in the concerned fine register, so as to disappear any evidence of the misappropriation of the amounts. Pending enquiry the writ petitioner and the said R.Srinivas were placed under suspension and subsequently their suspension came to be revoked under Proceedings Dis.No.4086/2001, dated 26-4-2001. The department examined two witnesses and exhibited 9 documents to substantiate the charges leveled against the delinquents. On considering the evidence on record and on hearing the delinquents, the Enquiry Officer recorded a finding that the charges leveled against the writ petitioner are proved and whereas of the charges leveled against R.Srinivas; charge No.3 is proved and charge No.4 is not proved and accordingly a report is submitted by him on 19.12.2000. The disciplinary authority concurred with the findings of the Enquiry Officer and issued a show cause notice to the delinquents proposing the punishments. The writ petitioner submitted his explanation to the proposed punishment. The disciplinary authority considered the Enquiry Report as well as the explanation submitted by the writ petitioner and imposed punishment of dismissal from service besides ordering recovery of Rs.4500/- from his service benefits. The writ petitioner filed a departmental appeal against the order of dismissal. In the departmental appeal it was recorded that the writ petitioner was not required to be punished so far as charge No.1 is concerned. However, the order of dismissal is maintained in view of the finding recorded on charge No.2. We deem it appropriate to refer the relevant portion of the order passed in the departmental appeal preferred by the writ petitioner and it is thus:

> ".....The only infraction appears to be is the appellant No.1 entrusting the amount to deposit into bank to appellant No.2, who is unconcerned with that Court to which those amounts pertain. It has been explained by the 1st appellant in his written statement inter alia that

he used to send the amounts pertaining to the Court of Special J.F.C.M., Hyderabad East and North as he was in charge of both the courts through the appellant No.2, inasmuch as the attender of Special J.F.C.M, Hyderabad West and South by name Kistaiah was suffering from paralysis and was of unsound mind. It was obvious therefore that it is not for the first time, the 1st appellant sent the two amounts of Rs.600/- and Rs.4400/- through the 2nd appellant and it has been the practice of getting the amounts deposited pertaining to both the courts through the 2nd appellant. There is no gain saying of the same from the 2nd appellant. On the other hand, his plea amply buttressed the plea taken by the 1st appellant. In fact charge No.1 reads that the 1st appellant entrusted both the amounts to the 2nd appellant, attender of Special J.F.C.M, Hyderabad East and North when he is no way concerned with the court of J.F.C.M., Hyderabad, West and South. Therefore, the only infraction that can be squarely attributed to the 1st appellant is that he entrusted the amount to the attender of another court. Obviously, the amounts have not been misappropriated by the 1st appellant. But, those amounts have been remitted with the permission of the court by the 2nd appellant. In such circumstances, charge No.1 does not warrant any punishment to be awarded against appellant No.1.

As regards charge No.2, the same plea has been taken by the 1st appellant of entrusting the amounts to the 2nd appellant and the 2nd appellant misappropriating the same by removing the challans from the fine register. This has not been supported by the 2nd appellant. On the other hand, he denied the same. The 1st appellant being in charge of the fine register, and as the amounts covered by the challans mentioned inter alia in charge No.2 having not been obviously deposited with the bank, the charge No.2 has been proved against the appellant beyond any doubt.

In view of the plea taken by the 2nd appellant, charge No.3 has been automatically proved against him. The findings of the Enquiry Officer in that view of the matter are impeccable. The findings of the Enquiry Officer have been accepted by the learned District Judge, on an independent appreciation of the evidence and material on record.

Therefore, there is nothing to interfere with the finding of guilt in respect of charges 1 to 3 against the appellants 1 and 2 concurrently given by the Enquiry officer as well as the disciplinary authority.

Under the impugned proceedings the learned District Judge in para 13 was of the view that the appellant No.1 deserved minor punishment in respect of charge No.1 and major punishment in respect of charge No.2. It appears that explanation of appellant No.1 as regards charge No.1 has been accepted. The punishments awarded to both the appellants having regard to the gravity of the offences alleged are no way disproportionate.

No violation of any principles of natural justice has been complained of. No infraction of the procedure envisaged under the rules has also been complained of. When the charges of misappropriation are thus proved and as the punishment awarded to both the appellants is no way disproportionate to the gravity of the charges, there are no compelling reasons to interfere with the impugned proceedings of the learned District Judge.

The appeals, therefore, deserve to be dismissed.

Accordingly, the appeal petitions of Sri.K.Rajendra Babu and Sri.R.Srinivas 2nd and 3rd read above are hereby dismissed."

4. The writ petitioner filed a review petition and the said review petition came to be dismissed by High Court on 14.8.2003. Thus, the Writ petitioner before us challenging the proceedings issued by the Disciplinary Authority as well as the Appellate Authority.

5. Learned counsel appearing for the petitioner submits that the Enquiry Officer and disciplinary authority as well as the appellate authority missed to note of the practice of depositing the fine amounts in Bank through R.Srinivas/delinquent No.2 and thus whatever amounts the writ petitioner collected were entrusted to Srinivas and therefore it was Srinivas who misappropriated the amounts covered under charges 1 and 2. He further submits that the punishment imposed on the writ petitioner is disproportionate to the misconduct and thus the order of dismissal deserves to be set aside.

6. The learned Standing Counsel appearing on behalf of respondents submits that the disciplinary authority and the appellate authority

considered the report of the Enquiry Officer and accepted the same by giving cogent and convincing reasons and the punishment of dismissal in the circumstances of the case is just and proper and the same is not liable to be interfered in this writ petition.

7. R2/disciplinary authority framed four charges against the writ petitioner and R.Srinivas. The first two charges relate to the writ petitioner and the latter two charges relate to R.Srinivas. The first charge against the writ petitioner relates to remittance of amount in bank through R.Srinivas who is in no way concerned to his court. The second charge is that he mis-appropriated the amounts covered under (1) Challan No.20573, dated 3-5-2000 for Rs.900/-, (2) Challan No.04178 dt.5-6-2000 for Rs.2400/- and (3) Challan dated 8-6-2000 for Rs.1200/-. The explanation of the writ petitioner for the first charge is that there was no other person for depositing the amounts relating to Special Judicial Second Class Magistrate, Hyderabad (W & S) and therefore he was sending the amounts through R.Srinivas who was working in Special Judicial Second Class Magistrate, Hyderabad (E & N) for depositing the amounts. The further explanation of the writ petitioner is that he sent the amounts covered under charge No.2 through R.Srinivas for depositing in bank, but the said R.Srinivas did not deposit the amounts and produced fake challans and subsequently removed fake challans from the concerned register so as to conceal the misappropriation of the amounts. The Enquiry Officer found the writ petitioner guilty of both the charges. The disciplinary authority concurred with the findings of the enquiry officer and after following the formalities i.e. issue of show cause notice passed the order of dismissal w.e.f. 30-11-2001 besides recovery of Rs.4,500/- together with simple interest thereon @ 12 percent from 1.7.2000 from his service benefits. The appellate authority, on re-appraisal of the material brought on record, recorded a finding that charge No.1 does not warrant any punishment while maintaining the punishment of dismissal from service for charge No.2. The revision preferred by the writ petitioner also proved to be futile and thus he is

before us through this Writ Petition.

8. The total amount covered under charge No.2 is Rs.4,500/-. The plea taken by the writ petitioner is that he entrusted the amount to R.Srinivas for depositing the same in the Bank and that the said R.Srinivas produced fake challans and subsequently caused disappearance of the same from the record. Sofaras the practice of depositing the money in Bank through the said R.Srinivas, the same has been proved by the writ petitioner during enquiry and the same has been accepted by the disciplinary authority as well as the appellate authority. The pertinent issue is with regard to the entrustment of money covered under charge No.2. The writ petitioner took the plea that R.Srinivas produced fake challans and subsequently caused disappearance of the same from the record. Admittedly, the register containing the copies of the challans was in the custody of the writ petitioner. The very fact that he allowed access to R.Srinivas, which probably facilitated him to cause disapparance of the copies of challans from the record, indicates any amount of dereliction in discharge of his duties.

9. The petitioner was working on deputation in the court of Special Judicial Second Class Magistrate, Hyderabad (W & S) on deputation at the relevant point of time. It has also come on record that the attendant who was appointed on consolidated pay was not of sound health and he was not capable of depositing the amount in Bank. However, the entrustment of money to R.Srinivas who was working in other court cannot be justified since it had no approval by the Presiding officer of the Court. We conclude that the entrustment of the amount to R.Srinivas who was in no way concerned with the Special Judicial Second Class Magistrate Court, Hyderabad (W & S) is contrary to the procedure and it cannot be approved. This amounts to clear dereliction on the part of the writ petitioner in discharging his duties. The next question is whether the punishment of dismissal is

shockingly disproportionate in the circumstances of the case.

10. In B.C.CHATURVEDI V. UNION OF INDIA AND OTHERS the Apex Court observed as follows:

" A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to re-consider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof."

11. In UNION OF INDIA AND ANOTHER V. G.GANAYUTHAM the Apex Court summed up the position relating to proportionality in paragraphs 31 and 32, which reads as follows:

" 14. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision making process and not the decision.

15. To put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is

shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed."

12. The amount covered under charge No.2 is Rs.4,500/-. The writ petitioner could not prove his plea of entrustment of the challans vide (1) Challan No.20573, dated 3-5-2000 for Rs.900/-, (2) Challan No.04178 dt.5-6-2000 for Rs.2400/- and (3) Challan dated 8-6-2000 for Rs.1200/- which are subject matter of charge No.2 to the said R.Srinivas because of the disappearance of relevant copies of challans from the register. The writ petitioner served judicial department nearly for 17 years. He started his career as Record Assistant on 5.11.1984 and was promoted as Bailiff on 10.9.1986 and further promoted as L.D.Clerk on 20-10-1996. There was no allegation that either he had committed any kind of delinquency prior to the initiation of disciplinary proceedings in question. In view of the above facts, we are in no hesitation to hold that the punishment of dismissal is shockingly disproportionate to the proved misconduct. Therefore, we set aside the order of dismissal passed by the disciplinary authority as well as appellate authority and remand the matter back to the disciplinary authority to pass appropriate punishment other than dismissal from service.

13. In the result, this Writ Petition is allowed with the above direction. No costs.

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(Devinder Gupta, C.J.)

(B. Seshasayana Reddy, J)

Tnb

Dated: 03-03-2005.

That Rule Nisi has been made absolute as above.

Witness the Honourable Sri Devinder Gupta, the Chief Justice on this Third Day of March, Two Thousand Five.

.... REGISTRAR

To

1. SMT.M.BHASKARA LAKSHMI, SC FOR APHC, High Court Buildings, Hyderabad.
2. Principal District and Sessions Judge, R.R. District, L.B.Nagar, Hyderabad.
3. 2 CD copies.

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